IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 637

JOHN D. MYERS, *Petitioner*

v.

JOHN B. HOLLISTER, DIRECTOR, International Cooperation Administration, PHILIP M. YOUNG, CHAIRMAN AND GEORGE M. MOORE, FREDERICK J. LAWTON, COMMISSIONERS, United States Civil Service Commission, *Respondents*

BRIEF FOR THE AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The American Legion has a deep interest in the provisions of the Veterans' Preference Act of 1944, as amended, because that statute was enacted with the unqualified endorsement of The American Legion and, in fact, The American Legion itself was instrumental in the drafting of the language of that statute.

The American Legion was created by the Act of Congress, approved September 16, 1919 (36 U.S.C. 41-51). The American Legion today has approximately three million members, each of whom has served on active duty in the Armed Forces of the United States during periods of hostility. Ever since its creation The American Legion has been repeatedly invited by the Congress to appear before its various Committees in both the House and the Senate to testify on matters concerning the interest and welfare of veterans.

The Congress has, through its appropriate Committees, never failed to invite The American Legion to testify on any legislation which concerned the rights of veterans. It would be strange indeed if the Congress were to ignore or fail to avail itself of the advice and assistance of The American Legion, for the Congress itself created The American Legion, knows its purpose, and is fully aware of the responsible control which the extensive membership of The American Legion exercises over its National Officers.

The American Legion's deep concern with the present litigation arises from the fact that the Court below has invalidated a key provision found in Sections 2 and 12 of the Veterans' Preference Act of 1944, as amended. This invalidation is said to rest on an implied repeal. The statute which is said to effect that implied repeal (the Mutual Security Act of 1952) was a statute on which neither The American Legion nor any other veterans' organization was invited to testify, for it bears no relation to veterans' rights. Even leaving aside the well-known principles governing implied repeals, it seems to The American Legion that any one who would contend that the Congress impliedly repealed a fundamental provision of the Veterans Pref-

erence Act in a statute which apparently had no relation to veterans' affairs must necessarily assume a heavy burden. That burden can fairly be said to include with it the assumption that Congress was guilty of concealment, (which we do not believe) for as the legislative history of the Congress shows since the date of the creation of The American Legion, the Committees of the Congress have always welcomed the counsel, advice, and recommendations of The American Legion and other veterans organizations on any matter of concern to their members.

For the foregoing reasons, The American Legion is deeply interested in the question which is tendered to this Court by the Petition filed herein. The American Legion believes the decision of the Court below is in error which unless corrected will exercise an adverse effect upon all future judicial considerations of the Veterans' Preference Act.

The American Legion is not less interested in this legislation simply because the Petitioner has long been a member of The American Legion, but for reasons herein expressed, the interest of The American Legion goes beyond personal considerations.

STATEMENT

The American Legion believes it is necessary to supplement the "Statement" found in the Petition. We take no issue with anything found in Petitioner's statement, but we feel that there is need for an elaboration upon the statement to insure that *all* of the *relevant* facts will be submitted to the Court. The American Legion is convinced that a review of the legislative history of the statutes involved is necessary to appreci-

ate the importance of the question now tendered to this Court.

Petitioner was plaintiff in the District Court. His complaint alleged that he was unlawfully separated from the Mutual Security Agency on September 17, 1952. Plaintiff claimed the benefits specified for preference eligibles in Sections 2 and 12 of the Veterans' Preference Act. Plaintiff alleged that the MSA Director had ordered his discharge in a reduction-in-force without regard to the Veterans' Preference Act on the theory that it was impliedly repealed by the MSA proviso. The question was, thus, squarely presented: did the MSA proviso impliedly repeal, *pro tanto,* Sections 2 and 12 of the Veterans' Preference Act?

In pertinent part, Section 2, of the Veterans' Preference Act, reads as follows:

> ". . . (I)n retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary . . . preference shall be given to . . . (4) those ex-Servicemen and women who have served on active duty in any branch of the Armed Forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized) and have been separated therefrom under Honorable Conditions; . . ." (5 USC 851)

In pertinent part, Section 12 of the Veterans' Preference Act, reads as follows:

> "In any reduction in personnel in any civilian service of any Federal Agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military prefer-

> ence, length of service, and efficiency ratings; Provided, . . . Provided further, That preference employees whose efficiency ratings are good or better shall be retained in preference to all other competing employees . . ." (5 USC 861)

Neither the MSA Director, nor the Civil Service Commission contended that the plaintiff below was not entitled to the maximum protection that the Veterans' Preference Act could afford. Their response to the complaint, however, was a motion for summary judgment based on the contention that the MSA proviso impliedly repealed the Veterans' Preference Act. In pertinent part, the MSA proviso reads as follows:

> ". . . (N)inety days after the enactment of the Mutual Security Act of 1952, the number of civilian employees . . . receiving compensation or allowance from . . . appropriations authorized by this Act, employed . . . by or assigned to the Mutual Security Agency, or employed by or assigned to the Department of State or the Department of Defense for carrying out programs . . . which are authorized by this Act, and the military personnel assigned to such programs, shall be in the aggregate at least 5 per centum less than the number so employed or assigned on June 1, 1952 . . . Provided further, that after the (MSA) Director has determined the reduction to be effected in each Agency, the determination as to which individual employees shall be retained shall be made by the head of the Agency concerned."

The Government relied on three paragraphs in House Report No. 1922 on pages 67-68 in support of their contention that the above-quoted MSA proviso impliedly repealed the Veterans' Preference Act. That language is quoted in full in the majority opinion of

the Court of Appeals. (See Petition, Appendix B, pages 21, 22)

House Report No. 1922 was one of two reports on the MSA legislation submitted to the House. No formal action was taken by the House, so far as concerns House Report No. 1922. On May 12, 1955, Congressman Richards submitted House Report No. 1922 to the House,[1] and the Bill covered by that report (HR 7005) was referred to the Committee of the Whole House.

On May 21, 1952, the Committee of the Whole House began consideration of HR 7005 (which was later enacted as the Mutual Security Act of 1952). Mr. Richards opened the presentation of the arguments in favor of the legislation[2] and in the early part of a lengthy presentation he made the following *oral* statement to the Committee of the Whole House:

> "SUMMARY OF CHANGES IN BILL MADE BY COMMITTEE
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> "Now we come to the Bill before us. The thorough study of HR 7005 made by the Committee is reflected in the more than 20 amendments made in the text of the Bill as reported. To simplify consideration the Committee amendments were consolidated into one new text, so I wish to enumerate the principal ones for the information of the House. They are: (p. 5645)
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[1] Congressional Record (82nd Congress, 2nd Session) Volume 98, Part 4, p. 5080.

[2] Op. cit., Vol. 98, Part 5, p. 5644 (May 21, 1952).

"Section 7:

"Required a 10 per cent reduction—based on January 1, 1952 personnel—of personnel other than blue-collar workers and technical consultants." (p. 5646)

It is obvious from the above that no one can conclude from Mr. Richards' statement that there was imbedded in the proposed reduction in force a plan to repeal or suspend the Veterans' Preference Act.

During the same initial presentation to the Committee of the Whole House, Congressman Richards yielded the floor to Mr. Ribicoff, who also spoke on behalf of the Bill.[3] Mr. Ribicoff, in turn, undertook to summarize to the Committee of the Whole House the salient provisions of the Bill as *he* understood the legislation. Out of his lengthy presentation, he devoted but two (2) sentences to the MSA proviso. His comments were in these words:

"Within 90 days of the enactment of this bill, the total number of United States citizens working on the program must be reduced at least 10 per cent below the January 1, 1952 figure. It is estimated that over 1,000 employees will be affected." (p. 5658)

Again, during the same initial presentation to the Committee of the Whole House, Congressman Richards yielded the floor to Mrs. Kelly[4] and Mrs. Kelly, in turn, gave her summary of the principal features of the Bill. She devoted one sentence to the MSA proviso. The full text of her comments on the MSA proviso are as follows:

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[3] Ibid, p. 5654 (May 21, 1952).

[4] Ibid, page 5673 (May 21, 1952).

> "Required by July 1, 1952, a 10% reduction—based on January 1, 1952, personnel—of personnel other than blue-collar workers and technical consultants." (p. 5675)

We pause in the statement of the legislative history to suggest that no logical mind can conclude that the Committee of the Whole House was properly apprised by any of the three principal speakers on behalf of the Bill of the "fact" that the MSA proviso was intended to repeal the Veterans' Preference Act, and, if the members of the House had consulted the text of House Report No. 1922 they would doubtless have turned to Appendix IV (beginning on Page 101) for the "Section-by-Section analysis." If they did so, they would have found the following, and only the following as an explanation of the MSA proviso:

> "Section 7(d).—This section requires a *further* reduction in personnel. Within 90 days of the enactment of this bill the total number of United States citizens engaged in the Mutual Security Program must be reduced at least 10 per cent below the January 1, 1952 level of employment. Excepted from this provision are, (a) Defense Department personnel engaged in the manufacturing, repair, rehabilitation, packing, handling, crating, or delivery of material, and, (b) civilian employees not paid from administrative expense appropriations for the Mutual Security Program." (Italics added)

A "further" reduction in personnel? Does this not then refer to the prior legislative order to reduce personnel? Would not the normal reader assume that a "further" reduction would, in the absence of explicit warning, be upon the same basic terms and conditions as the earlier one? The reduction in personnel which

had been required by Congress in the Mutual Security Act of 1951 (for text see Appellant's brief, page 6) could not possibly have been construed, even by resort to doctrines of the decision of the court below, as repealing the Veterans' Preference Act. In fact, Congress had never exempted any agency head from the requirements imposed by the Veterans' Preference Act, and it is fantastic to assume that a Congressman would realize, from the foregoing, that he was being asked to do so. Nay,—all that was proposed was a "further" reduction in personnel—not a reduction of personnel at the whim (or discretion) of the three department heads. To read the foregoing summaries in any other way is to impute fraud to their authors.

The second installment of the report to the Committee of the Whole House on the bill here under discussion occurred on May 22, 1952, and again the discussion of the report was opened by Congressman Richards,[5] and no where in the second period devoted to a consideration of the bill was there any reference to the MSA proviso.

On the third day of consideration of the bill by the Committee of the Whole House on May 23, 1952, Congressman Richards again opened the discussion.[6] On this occasion, that portion of the bill wherein the MSA proviso itself was found was submitted for consideration. The MSA proviso itself represents approximately one-quarter (¼) of one column out of slightly more than five and one-half (5½) columns of text as reported in the Congressional Record.[7] There were 13 separate

[5] Ibid, at p. 5805.

[6] Ibid, at pp. 5905-5906.

[7] Ibid, at pp. 5905-5907.

amendments offered to this portion of the bill by friend and foe alike[8] and, not one of those amendments related to the MSA proviso and not one word was mentioned respecting the MSA proviso in any of the discussions relating to that portion of the bill wherein it was found.

It is apparent to anyone that will read the legislative history of the bill that the Committee of the Whole House was interested in issues of world-wide importance, matters relating to this Nation's security. There was no thought at any time, of amending the Veterans' Preference Act by enacting that bill. Thus, shortly before the bill was approved by the Committee of the Whole House (a few minutes later the bill was approved by the House as such) the manager of the bill summed up what he called "the real issues." A fair sample of that summing up by Congressman Richards is given in the following excerpt:

> "Mr. Richards. Mr. Chairman, before we take final action on this bill, I want to call the attention of the Members to the issues involved and say that I expect to demand two (2) roll call votes in addition to a roll call on passage of the bill.
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> "The real issue before us is to decide what course is best for our Country. I give full faith and credit to the honesty of purpose, the sincerity and patriotism of every man and woman in this House and I have the fullest respect for the views of those with whom I have differed in voting on amendments offered to this Bill today. This Mutual Security Bill is so vital a measure that on our judgment today depends an issue which will affect, not only our children but our children's children

[8] Ibid, at pp. 5908-5911.

and their grandchildren. We are all concerned, and justly so, about the cost of the Mutual Security Program in terms of the strains they make on the economy and the stability of the United States, but, in weighing all the facts which confront us, I sincerely believe that when most of us search deep down in our hearts, we will realize beyond doubt that this is a premium we must pay to insure the future of our children and our Country."

It is earnestly submitted that it is utterly inappropriate to assume that legislators who are trying to solve problems of that magnitude should be presumed to have intended, by a curiously restrained nicety of language in a minor part of the Bill, to have repealed benefits which had been given to some of the very men who had previously risked their very lives to save the Nation.

The legislative history in the House is incapable of supporting the theory of the decision of the court below. But, even more opposed is the legislative history in the Senate. The Senate version was initially reported to the Senate by the Foreign Relations Committee on April 30, 1952.[9] This Committee report (S. Rept. 1575) contained no proposal for a reduction in personnel, and *a fortiori* contained no comments in any way comparable to those quoted by the majority opinion below from House Report No. 1922.

By vote on May 5, 1952, the Senate re-referred the Bill to the Committee on Armed Services.[10] On May 15, 1952, the Armed Services Committee reported the Bill favorably.[11] This Committee report (S. Rept.

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[9] Op. cit., Volume 98, Part 4, p. 4640.

[10] Ibid, at p. 4774.

[11] Ibid, Vol. 98, Part 4, p. 5192.

1409) contained no proposal for a reduction in personnel, and *a fortarari* contained no comments in any way comparable to those quoted by the court below from House Report No. 1922.

The Senate deliberations on the Bill are reported at pages 5931-5957, 6007-6031, 6058, 6088-6158.[12] The Senate enacted its own version of the bill as a substitute for the legislation previously enacted by the House.[13]

When the House was informed of the action taken by the Senate as reported above, the House refused to agree and a Conference Committee was appointed on May 29, 1952.[14]

When the Senate was advised of the House action, Senator Connally asked that a Conference Committee be appointed to represent the Senate, and this motion was agreed to on May 23, 1955.[15]

The report of the Conference Committee (House Report 2031) was submitted to the House on June 4, 1952 and ordered to be printed.[16]

The Conference Report was submitted to the Senate on June 6, 1952 by Senator Connally.[17]

On June 5, 1953, the Conference Report was called up before the House by Congressman Richards and

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[12] Op. cit., Vol. 98, Part 5, Dates concerned, May 26, May 27, May 28, 1952.

[13] Ibid, at p. 6158 (May 28, 1952).

[14] Ibid, at p. 6259.

[15] Ibid, at p. 6276.

[16] Ibid, at p. 6576.

[17] Ibid, at p. 6735.

without objection the statement of the Managers on the part of the House was read in lieu of the report.[18] The Report, which (as noted) was not read to the House, included the MSA proviso as it was finally enacted. The "Statement" of the Managers on the part of the House covers approximately two and two-thirds (2-2/3) pages of the Congressional Record,[19] and the portion deemed pertinent at this time reads as follows:

"STATEMENT

"The Managers on the part of the House at the Conference on disagreeing votes of the two Houses on the amendment of the Senate to the Bill (H.R. 7005) to amend the Mutual Security Act of 1951, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying Conference Report: (p. 6659)

* * * * * *

REDUCTION IN PERSONNEL—SECTION 7(f)

"The House Bill provided for a 10 per cent reduction from the level of January 1, 1952, in personnel engaged in carrying out the United States program. The Senate amendment contained no such provision. The conference agreement changes the date on which the reduction is to be based to June 1, 1952, and provides for a 5 per cent reduction.

"The Committee of conference believes that this action is necessary to insure that adequate personnel will be provided to carry out programs in countries where agreements are just being completed preparatory to beginning operations. It should be noted that the reduction provided for in

[18] Ibid, at p. 6655.

[19] Ibid, at pp. 6659-6662 (June 5, 1952).

this section applies to personnel employed by the Departments of State and Defense and the Mutual Security Agency.

"Point IV Program activities are carried out through participating agencies as well as the Department of State's Technical Cooperation Administration. These agencies maintain substantial staffs in Washington as well as the TCA headquarters. These agencies should take steps to reduce their staffs. It is the intent of the committee of conference that all staffs in Washington concerned with Point IV should be brought to reasonable levels. The committee of conference expects the Administrator of the Technical Cooperation to see that this is achieved." (p. 6660)

As before, the principal argument in favor of the Bill was delivered by Congressman Richards. It is submitted that the following brief excerpts of Congressman Richards' comments (delivered to the House on June 5, 1952) in support of the conference report are of particular interest:

"Mr. Richards. Mr. Speaker, the bill as reported by the conference represents what I consider a fair adjustment of the major differences between the two Houses. At the same time, I feel the conferees did a good job of retaining in the conference agreement the basic principles adopted by this House, while incorporating certain Senate provisions * * * "

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"We have kept in the reduction-of-personnel provision, except that the committee of conference changed the percentage to 5% * * *.

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"Several provisions adopted by this House are not retained in the agreement * * * ".

"There are other adjustments in the conference agreement, but the more important ones I have already outlined. I believe we now have before us a better bill than either the House or Senate version, better coordinated and better designed to enable the program to move ahead with a maximum of efficiency and a minimum of cost to the American taxpayers." (p. 6664)

Shortly after the foregoing remarks, Congressman Richards yielded the floor to Mr. Vorys, who made the following remarks:

"Mr. Vorys. Mr. Speaker, I signed this conference report and intend to vote for it. I was disappointed over a number of the decisions of the conferees. To be frank about it, I was disappointed earlier over some of the actions here in the House and in our committee on this bill but I realize that in legislation you cannot have it all your own way. Here we practice the art of the possible. This report is about as satisfactory as was possible, under all the circumstances.

"When I went into conference I felt mighty lonesome because, except for my colleague, the gentleman from Illinois (Mr. Chipperfield) and myself, every conferee had voted against every floor cut that had been effected in either body; and the score was, therefore, 8 to 2 . . .

"After about a half a day of skirmishing and bargaining we got around to this 50-50 formula on amount, splitting the difference between the House and Senate figures. The Senate operates in broad generalities and they had cut this bill not with a meat ax but with a buzz-saw, cut off a 15.2 per cent slab all the way through. In the House we had been selective and cut where we felt cuts ought to be applied. The conferees might have forced an overall distribution of the 50 per cent adjustment

> along the lines of the Senate bill. Instead, they applied the 50-50 formula selectively and split the difference on each item, so that we preserved the selective effect of the cuts that were made by the House. * * * " (p. 6665)

Within a matter of minutes thereafter, the Conference Report itself was "agreed to" by the House,[20] and it is apparent that the Conference Report is not only a substitute for House Report No. 1922, but it is also apparent that it contains nothing which in any way supports the construction which the majority decision below gives to the MSA proviso.

When the Conference Report was considered by the Senate (on June 9, 1952) support for the Report was managed by Senator Connally who made the following remarks pertinent to the present subject; and, for purposes of clarity italics have been added:—

> "Mr. Connally.
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> "Mr. President, the committee of conference on the Mutual Security Act of 1952 met all day last Tuesday to resolve the difference between the House and Senate version of that bill. There were a number of differences between the two Houses, all of which were resolved after a careful examination of the issues. Before asking for approval of the conference report, *I want to tell the Senate of the more important issues we faced and the way in which they were met.*
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> "Fourth. Reduction in personnel: The House version of the bill provided for a 10 per cent reduction in the number of United States citizens em-

[20] Ibid, at p. 6666 (June 5, 1952).

ployed pursuant to the appropriations authorized by this legislation as of January 1, 1952. *The Senate conferees agreed that some reduction of personnel was desirable,* but felt that there should not be a sharp reduction in personnel at a time when deliveries of military end items are beginning to arrive in Europe in increasing quantities and when the Technical Cooperation Program is just getting started in some countries.

"As a compromise, therefore, *we agreed to the House provision reducing personnel* in these programs *but changed the reduction figure to 5 per cent of the number* of employees on the payroll as of June 1, 1952. We adopted that date for its effectiveness, rather than a future date, in order to prevent the building up prior to the date of a large number of employees which we did not regard as necessary." (p. 6819)

The Senate "agreed to" the Conference Report on the same June 9, 1952.[21]

By reason of the foregoing it is respectfully submitted that it is entirely inappropriate to rely upon the excerpts quoted by the present majority opinion from the House Report No. 1922. It clearly appears that that report was supplanted by the Conference Report referred to above, and it further appears that the Senate was never at any time put on notice, directly or indirectly, of the suggestion that it was the purpose of the MSA proviso to authorize the heads of the three agencies concerned to dismiss honorably discharged veterans and other classified career civil service employees without regard to the rights which the Congress had for so many years insisted upon in their behalf.

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[21] Ibid, at page 6849.

The American Legion believes that the foregoing is a rather complete picture of the legislative history of the MSA proviso. The majority opinion of the Court of Appeals refers only to one of the five Committee Reports referred to above, and offers no explanation as to why or how the Report submitted to the House, upon which no action was taken (and later was superseded by a Conference Report which was approved by the House) should be considered as an authoritative expression of legislative intent.

We now come to a consideration of the Veterans' Preference Act, which the majority opinion of the Court below indicates has been struck down by the MSA proviso which we have just considered. It should be kept in mind that the MSA proviso became law on June 20, 1952, and the personnel action of which petitioner complained took place on September 17, 1952. In between these two dates (on July 14, 1952) the Congress amended Section 2 of the Veterans' Preference Act. The bill which effected that amendment was submitted to, and reported on, by the House Post Office and Civil Service Committee.[22] The report submitted on the bill which became law on July 14, 1952, (House Report No. 2338) is reprinted in full in 2 U.S. Congressional News, 1952, pages 2152-2154. This report includes the following statement:

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[22] As Appellant's brief pointed out to the Court below, the House Post Office and Civil Service Committee is a group which is traditionally entrusted by the House with the assignment of studying and recommending proposed legislation which affects veterans' preference rights in the civil service. The Committee in whose name House Report No. 1922 was issued—The House Foreign Affairs Committee—is not even supposed to be concerned with civil service legislation.

"It is the purpose of this legislation to extend the benefits of the Veterans' Preference Act of 1944 to persons serving in the Armed Forces of the United States after April 28, 1952 (the date of the signing of the Treaty terminating the state of war between the United States and the government of Japan) and prior to July 2, 1955, the date on which inductions under the Universal Military Training Act are terminated.

"Under the present Veterans' Preference Act veterans' preference for civil service purposes has been granted, among others, to those exservice men and women who have served on active duty in any branch of the Armed Forces of the United States during any war or during any campaign or expedition for which a campaign badge has been authorized.

"While hostilities during World War II ceased with VJ Day, a technical state of war existed until April 28, 1952. As a result, persons who entered the Armed Forces during actual hostilities and until April 28, 1952 were entitled to the benefits accorded to veterans under the Veterans' Preference Act of 1944.

"However, with the signing of the Peace Treaty with the government of Japan, only those servicemen actually in Korea, for which military operation a campaign badge is authorized, have veterans' preference for civil service purposes.

"The men presently inducted into the armed service are, of course, faced with many of the same situations as those who were inducted prior to April 28, 1952. They must involuntarily submit to a disruption in their professional careers or occupations, manner and place of living, and undergo rigorous training.

"Hearings were held by the Committee at which representatives of the Civil Service Commission

and the various veterans' organizations and employee organizations appeared. They were unanimously in favor of the bill.

"The Bureau of the Budget approved the bill but suggested an amendment which would exclude training for periods of such reserve training. It was conclusively shown that such an amendment was not necessary and if adopted, might place in question decisions during the past years made by the Civil Service Commission holding that reserve training was not active duty for the purposes of the Veterans' Preference Act."

The Court below was urged to recognize the rule announced by this Court in *U. S.* v. *Barnes* (Ky—1912) 22 U.S. 513, 529; 32 S. Ct. 117; 56 L. Ed. 291, where it stated:

"Much of our national legislation is embodied in codes, or systematic collections of general rules, each dealing in a comprehensive way with some general subject, such as the customs, internal revenue, public lands. * * * and it is the settled rule of decision in this Court that where there is subsequent legislation upon such a subject it carries with it an implication that the general rules are not superseded, but are to be applied to its enforcement, save as the contrary clearly appears."

As reference to House Report No. 1289, dated March 27, 1944 will disclose, the Veterans' Preference Act of 1944 was intended "to codify" laws respecting veterans' preference in the civil service. That statement, quoted from U.S. Code Congressional Service, 78th Congress, Second Session, at page 1154 reads as follows:

"GENERAL STATEMENT

"It has been the policy of the United States government since the beginning of the Republic to

extend certain benefits to those who have risked their lives in the armed services during wartime. Since shortly after the Civil War, the Congress has provided in various statutes for different forms of preference in governmental employment to war veterans. These statutes have usually been applied under Executive orders and regulations promulgated by the President.

"For a number of years proposals have been introduced in Congress to codify or establish by statute veterans' preference in governmental employment. Your committee has conducted hearings on this subject at least three times within the past few years. This bill is an attempt to meet the requirements of such an act. * * *"

The foregoing is an expression of the Congress itself with reference to veterans' preference. In adopting this policy the United States merely followed governmental policy which has existed in every civilized nation since the time of the ancient Greek city-states and oriental empires. It is evident to anyone who studies the history of veterans' preference that it has been a changing concept, but it is also quite evident that there has never been the slightest indication on the part of the Congress that they ever intended to abandon this traditional principle in any manner or in any area.

Moreover, in amending Section 2 of the Veterans' Preference Act on July 14, 1952, Congress unquestionably manifested its continuing intent to extend this traditional benefit to veterans of the Armed Forces and, equally as important, Congress, at that time, acknowledged the valid existence of veterans' preference with respect to *all* civilian positions in *all* establishments, agencies, bureaus, administrations, projects, and departments of the government, whether permanent or

temporary; a circumstance quite opposite from that found in the majority opinion of the Court below.

The American Legion at this point invites attention to an interesting problem that would arise *if* the decision below were correct. This obversation does not concede that the said decision is correct, but it assumes that the two judges responsible therefor consider their judgment to be correct and lawful.

The problem arises thus:—the legislative history of the Act of July 14, 1952, (which, as pointed out above, was approved subsequent to the MSA proviso, and prior to Appellant's discharge) establishes beyond any reasonable doubt that the House Post Office and Civil Service Committee assumed, and by its assumption led the House to believe, that there had been no impairment of veterans' preference rights, and that none was contemplated. The Report manifests a clear intent to extend the Veterans' Preference Act to a new group of persons, and no one can reasonably conclude that the Committee itself, or the House, or the Senate, had the slightest suspicion that the Veterans' Preference Act was in any way to be effected by the MSA proviso which was still at that time pending before Congress.

It is equally apparent that by *expressly* amending the Veterans' Preference Act by the Act of July 14, 1952, the Congress makes it clear that the code of veterans' preference and civil service legislation is not to be amended, or deemed to be amended, except when the Congress itself expressly does so. If further proof of this proposition is desired it is found in 5 USC 2005 as enacted September 30, 1950 (c. 1123, Sec. 6, 64 Stat.); and, as Appellant's Brief points out, the Supreme Court takes an identical view in *United States*

v. *Barnes* (Ky—1912) 222 U.S. 513, 529; 32 S. Ct. 117; 56 L. Ed. 291 (quoted in Appellant's Brief on page 34).

The American Legion, therefore, submits that the judges responsible for the majority decision below, after reading the Act of July 14, 1952 (C. 728, 66 Stat. 626) and its legislative history, would be logically obliged to find that said Act impliedly repealed the interpretation which their decision gives to the MSA proviso.

It is to be remembered, in this connection, that Section 18 of the Veterans' Preference Act of 1944 (5 U.S.C. 867) expressly provides (in pertinent part) that "all acts and parts of acts inconsistent with provisions hereof are hereby modified to conform herewith . . ." Since the Congress took the trouble to specify that the Act of July 14, 1952 amended Section 2 of the Veterans' Preference Act of 1944, as amended, the full benefit of Section 18 was preserved, and by implication of the most obvious kind, the entire Section 2, as revitalized and extended (actually no revitalization was involved or necessary) by the amendment of July 14, 1952 is also entitled to the full benefit of Section 18, and consequently, it could be contended that the MSA proviso, as construed by the present decision, was (even before the Court below had an opportunity to make such a construction) expressly repealed by the enactment of the July 14, 1952 legislation. And, even if the MSA proviso of June 20, 1952 had said, as it did not, that the agency heads were to have "discretion" in deciding whom to discharge or retain, the present majority would be obligated to conclude (so long as it stands upon the present decision) that such grant of authority was annulled or impliedly repealed,

pro tanto, by the Act of July 14, 1952, or as suggested above, that it was repealed by virtue of Section 18.

CONCLUSION

From the foregoing, and the Appellant's Petition, The American Legion believes that the importance of the question tendered to this Court is unquestionably apparent for several reasons.

The Court of Appeals had on one hand the Veterans' Preference Act of 1944, together with an understanding of its stature and legislative history. That Court was aware that the statute was a codification of traditional principles as old as the Country itself, and which have been a part of the statutory law of this Country for nearly a century. On the other hand, was the MSA proviso with its legislative history as set forth herein. The Court below, as Petitioner points out, held that the MSA proviso impliedly repealed veterans' preference. The decision was based upon the incomplete and improper legislative history of the MSA proviso, and in addition was contra to long established and well settled rules of law as laid down by this Court.

Of great importance is the impact of this decision upon future judicial consideration of the Veterans' Preference Act. The decision has already been cited as authority in similar cases in the District Court.[23] The Court below seems to believe, contrary to the views of this Court, that a statute must fall by implication if one can *find* a meaning for subsequent legislation which *seems* inconsistent, rather than searching for a compatible construction. The legal chaos which would result is all too apparent.

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[23] See Petition, note 4, page 7. Also Joyce v. Barnes, Civil Action 2077-54 in the District Court is affected by this decision.

Lastly, The American Legion respectfully reminds this Court that the rights upon which Petitioner relied and which the lower Court disdained are rights given to those who have fought to preserve this Nation. The importance of rights so purchased and the equal importance of their repeal can not seriously be questioned in this Court; for without the consideration for which those rights were granted, this Court might very well have no jurisdiction and the laws which it construes have no existence.

The American Legion urges that the Petition be granted.

Respectfully submitted,

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